

ELIMINATING 3-STRIKES POLICIES: A SECONDARY RESEARCH ANALYSIS THAT  
EVALUATES 3-STRIKES POLICIES AND PROPOSES A STRATEGY FOR WEANING  
STATES OFF OF A POLICY THAT DOES NOT WORK

By

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### Abstract

The 3-strike policy was adopted by some states in the 1990s. Crime rates were becoming an increasing issue and the general public was starting to notice. The policy was supposed to decrease the crime rates to make people safe. The drastic sentencing on the last strike was supposed to decrease crime rates and create a safe environment for the public. This policy has done the opposite as what was intended and now states are facing multiple issues. Reversal of the 3-strikes policies could: reverse the increased crime rates, cause less financial issues, and offenders have the opportunity to get an appropriate sentencing.

### Eliminating the 3-Strike Policy:

A Secondary Research Analysis that Evaluates 3-Strikes Policies and Proposes a Strategy for Weaning States Off of a Policy that does not Work

#### **Introduction**

The 3-strike policy was first implemented with the best intentions by states utilizing the policy. Shortly after the policy started the problems began to arise and consequences kept piling up. States have the right to create and/or use policies they see fit to help the state overall. Policies are supposed to be efficient and help keep problems at bay. The general public and safety should always be considered and be made a priority when a new policy begins. The 3-strike policy is doing the opposite to states that use it. Since the policy has begun the states are seeing an increase in criminal rates, which is putting the safety of the public in danger.

The thought behind the 3-strike policy was to help reduce recidivism and as a result when an offender commits a crime they get a strike. Once they get the third strike, more or less depending on the state, they are considered to be out. When the offender is on the last strike the sentencing time jumps up drastically. Some states do automatically life in prison without parole but the average sentencing is 25 years to life, depending on state and court (Helland & Tabarrok, 2007). As a domino effect of the policy and increasing crime rates the states are spending more money on offenders to provide proper facilities and supplies for the extended sentencing for the out offenders (Chen, 2008).

Not only is the policy causing issues with finances and public safety it is treating the offenders unjustly. Even though the offender has committed crimes and must be punished that does not mean that they do not have rights and do not deserve an appropriate sentencing for the crime committed. Many of the crimes committed on the third strike would not even come close

to the sentencing they are getting, 25 years to life. The policy is causing people to waste their lives, also affecting their families and communities, behind bars and the unfair sentencing is not matching the crimes the offenders are committing, therefore making the sentencing unjust and uncalled for.

By getting rid of the policy and properly reintegrating the offenders back into society, citizens could reverse the problems the 3-strike policy has created. Offenders could be convicted and sentenced justly, the cost for states will go down, and the crime rate should also decrease. In eliminating the policy the states can actually accomplish what they intended in the first place, lowering and/or eliminating recidivism. The 3-strike policy was an attempt to help with recidivism, but it was not effective and recidivism is still an issue. Within 3 years of being released from incarceration 67.5% of offenders were rearrested (Langan & Levin, 2002). This statistic shows that recidivism is still occurring and that the policy is not the proper answer for what the states were trying to accomplish. Instead of 3-strikes policies being used, proven to be ineffective, long lasting rehabilitation should be the main focus for helping with recidivism.

### **Literature Review**

#### *What is a strike?*

Almost half, 24, of the United States utilize three-strike policies (Clark, Austin, & Henry, 1997). Each state has a different set of rules when it comes to their policy, but all end in the same result, the offender being released and reintegrated back into society. When an offender has enough strikes to be out they get a long-term sentence as the consequence for getting the final amount of strikes allowed. Once the offender accrues the third felony or strike, they are sentenced 25 years to life in prison, possibility for parole depending on the state (Helland & Tabarrok, 2007). Out of all the states currently using three strikes laws, none have a single

definition of what is an actual strike. Each state has different 'strike zones', which means that the crime committed is grouped into what the court can determine to be a strike for the convicted offender (Clark, Austin, & Henry, 1997).

Being in the 'strike zone' does not necessarily mean that the offender will be automatically receiving a strike. Instead, the court can decide if the offense is strike-able, there is no definite yes or no answer for a crime equaling a strike. The court will look at the criminal history of the offender, age, and severity of the crime to decide if the offender will get a strike or this is usually determined by the crime committed, if it is a felony, then it is a strike. This means that the offender will not know if they will be receiving a strike until they are convicted. The offender must be found guilty before receiving a strike, any of the strikes in the offenders criminal history. The offender could think they will receive a strike, and even be tried for it, but in the end they can be convicted without a strike (Helland & Tabarrok, 2007). The offender could be convicted without receiving a strike by the court. The reason include being convicted of a crime and they end up not being charged for a felony or the court just decides to not give the offender a strike. If the offender is convicted of a crime and it ends up not falling into the state's strike zone then they can no longer be tried for a strike. Another issue with offenders receiving different strikes is that there is no information on how the offender must serve the strikes previous to striking out. The offender could serve the minimum or maximum sentencing time for the first two strikes. The only thing that matters to the justice system, and states, is that criminals are convicted of the strike(s) (Vitiello, 1996).

Different states have different rules when it comes to implementing the three-strike policy (Caulkins, 2001). The different felonies that can be strike zones in states are serious felonies and non-serious felonies (Vitiello, 1996). Most serious felonies in these states consist of

crimes such as: rape, murder, sexual assault, violent crimes, etc. (Caulkins, 2001). Strike zone felonies that are non-serious could be crimes such as: theft, drug possession, burglary, fraud, etc. Typically, most states do the three-strikes for an offender to be out, but some do more and some do less depending on the crimes committed (Caulkins, 2001). Most state sentence the offenders once they are considered 'out' with 25 years to life incarcerated. Some states such as Indiana, Montana, and Maryland automatically sentences an offender to life without parole once they have struck out (Clark, Austin, & Henry, 1997). Each state can have different lengths of sentencing, example: 40 years, or a different allotted sentenced time the state has predetermined.

The average number of strikes that must be accrued by the offender is three in most states. California implements three strikes, the first two strikes must be serious felonies but the third strike can be any felony the offender commits (Caulkins, 2001; Zimring, 1996). California is the only state that changes its strike rules as the offender accrues more strikes. A state that has stricter rules is Pennsylvania; they only consider serious felonies as strikes (Caulkins, 2001). These serious felonies in Pennsylvania are: murder, rape, etc. for an offender to get strikes and to become out (Caulkins, 2001). Strict rules to get a strike makes it more difficult for an offender to accrue these strikes and to be out. Colorado considers any class 1, 2, or 3 felony to be strikeable crimes with the punishment of life in prison with the possibility of parole after 40 years (Caulkins, 2001). Florida has different sentencing on the third strike depending on the severity of the felony. If the last strike is a first degree felony the sentencing is life in prison, a second degree felony is 30-40 years, and a third degree felony is 10-15 years (Clark, Austin & Henry, 1997). Some crimes that can be strikeable in Florida are: forcible felonies, stalking, and child abuse. Indiana does life in prison without the possibility of parole once the offender gets 3 strikes for serious felonies: murder, rape, child molestation, etc. Nevada allows the court to pick out of

three possible sentencing for the offender: life without parole, life with possibility of parole after 10 years, or 25 years with possibility of parole after 10 years (Clark, Austin & Henry, 1997). The strike zone crimes for this state are: murder, robbery, kidnapping, child abuse, arson, and home invasion. Murder, robbery, and carjacking are crimes in New Jersey that can make an offender be out with the sentencing of life in prison without possibility of parole. New Mexico does life in prison with possibility of parole after 30 years for three strikes (Clark, Austin & Henry, 1997). North Carolina only considers violent felonies for its strikes and does life in prison with no eligibility of parole (Clark, Austin & Henry, 1997). First and second degree felonies can be considered strikeable offenses in Utah and the court can decide the sentencing from 5 years to life in prison. Vermont does up to life in prison for third strike for serious felonies such as: murder, manslaughter, kidnapping, etc. Virginia, Washington, and Wisconsin all sentence life in prison without parole for serious felonies, which consists of crimes like: rape, murder, assault, etc. (Clark, Austin & Henry, 1997).

In Louisiana, an offender is out with three strikes if they commit serious felonies: murder, rape, armed robbery, and manslaughter (Caulkins, 2001). Louisiana also has a strike out rule for an offender that commits four felonies. An offender must commit four felonies with at least one being considered a serious felony to get the four strikes to be out. Other states that go by four strikes are Georgia and Maryland (Clark, Austin & Henry, 1997). In the state of Georgia, the offender can commit any four felonies to be out (Caulkins, 2001). Georgia counts more strikes to be out because some of the felonies are less serious, non-violent. Maryland does four strikes to be out but they count serious felonies as strikes: murder, rape, sexual offenses, and manslaughter are all serious crimes this state counts (Clark, Austin & Henry, 1997). Once an offender gets four strikes in Maryland they are sentenced to life in prison without parole possibility.



Unlike Louisiana and Georgia some states go by only two strikes to be out. The states that require only two, but can go up to three if offender keeps getting convicted, strikes count much more serious felonies the offender must commit. Montana is a state that needs only two strikes to be out (Clark, Austin, & Henry, 1997). Crimes in Montana like sexual intercourse without consent, kidnapping, and abuse of a minor are all crimes that go towards the two strikes to be out resulting in life in prison without parole (Clark, Austin, & Henry, 1997). Arkansas does two strikes to be out for crimes such as: murder, kidnapping, and rape. Kansas counts any felonies against a person to count as the two strikes required for an offender to be out (Caulkins, 2001). Connecticut is a state that does two strikes to be out but the offender can be sentenced up to 40 years in prison, nothing longer. Rape, murder, rape of a child, assaults, and aggravated robbery can all count for the two strikes it takes in Tennessee to be out with life in prison (Clark, Austin, & Henry, 1997). North Dakota and South Carolina are the only two states that go by only two strikes to be out; they do not count strikes after the two (Clark, Austin, & Henry, 1997). North Dakota does different sentencing based on the class of felony on the second strike. Class A is up to life in prison, class B is up to 20 years, and class C is up to 10 years. South Dakota does one sentencing and that is life in prison.

An important question to ask for this policy is “Do strikes offenders have roll over to other states?” Can offenders’ strikes be combined from different states to make the offender be out? The Tenth Amendment of the Constitution allows individual states to make up policies and laws (U.S. Const. Amend X). The amendment itself allows some states to use the 3-strike policy and not others. This right the states are given, allows separation of policies meaning that a state does not have to accept another states strike on an offender, because the policy is not federal law. A strike, or strikes, that an offender accrues in one state does not get to roll over to another state

allowing strikes to be combined. Different states have different rules on how the 3-strike policy are utilized, so comparing the policy to different states could be difficult. An offender that has three strikes in California, the last felony being a non-serious felony, would not be considered out in Pennsylvania (Clark, Austin & Henry, 1997). Pennsylvania would not have to honor California's strike rules and have the offender be out if he/she did not have strikes from their state. A court is allowed, however, to look at the offenders' criminal history when determining the sentencing. The court can decide if the offender has an extensive criminal history and how severe they want to sentence the offender. This allows an offender to have more than 3-strikes total, a combination from different states, and they will not get the last strike sentencing.

*Not doing what's intended*

The intention of the 3-strike policy was that it would reduce crime rates by the state implementing harsher punishment to repeating offenders and help eliminate recidivism (Schultz, 1999). If crime rates went down the public, people and environment, would be safer due to less criminals and criminal activity happening. With a lower crime rate there would be less people being incarcerated and therefore the states would have to pay less money on expanding facilities due to lack of occupants. The drastic sentencing jump of the last strike is supposed to be a scare tactic to the repeating offenders, deterrence theory, and the general public so fewer crimes are committed (Males & Macallair, 1999). The goal for the policy in the beginning stages was to be a cure all from the threat of criminal activity happening in the United States. Issues started to arise when research was not done to back up this policy or to show significant data of what the 3-strike policy would produce. No significant analysis was done for how effective or ineffective the policy would be for these states (Zimring, 1996). These states did not do the research and did not take into consideration multiple factors that could cause a negative side effect before

implementing the policy. Before states started the policy they did not take into consideration the different crime rates in different cities, states, neighborhoods, etc., and how offenders would react to this policy (Males & Macallair, 1999). Due to the reaction by offenders as a result the 3-strike policy, repeating and new, the policy did not do what it has originally intended (Kovandzic, Sloan, & Vieraitis, 2002).

The whole thought behind the 3-strike policy is that repeating offenders would know the new punishment for the last strike and be scared into not committing any more crimes, aligning with deterrence theory. The use of general deterrence with the policy caused a reverse effect. It did not reduce recidivism as intended, but in reality the policy has little or no influence on offenders criminal activity and in some cases made them commit more crimes and causing more danger. Offenders were learning about the extended punishment of the last strike and were taking extra measures to not get caught. Offenders were now trying to reduce the risk of getting caught and being convicted of a strike, the third strike in particular (Kovandzic, Sloan, & Vieraitis, 2002; Stolzenberg & D'alessio, 1997). Some offenders were committing extra crimes on top of their initial crime as a cover up. An offender who commits a murder could be inclined into killing more people who were or whom they thought were witnesses to the initial crime as a result of having no one able to identify or report them (Kovandzic, Sloan, & Vieraitis, 2002). Having consistent punishments can help reduce behavior like this (Andres & Bonta, 2010).

The 3-strike policy was also not an incentive to reduce criminal activity because some of the crimes committed would have the same or close to the same length of sentencing whether it was a strike or not (Stolzenberg & D'alessio, 1997). An offender convicted of rape could get a 20 year sentence and if this was the offenders 3rd strike they could get 25 years to life. If the offender got the 25 years it would only be a small-extended time compared to the regular

sentencing (Stolzenberg & D'alessio, 1997). This lack of gap in sentencing is not persuasive enough for offenders to not commit the crimes. The same theory would go for a crime committed that would automatically have a life sentence, murder in most states. If the offender knew that the sentencing was going to be about the same as getting a strike it would not be a big deal to them. Another factor that was not taken into consideration is that repeating offenders only make up about 10% of the criminal activity committed (Shepherd, 2002). With such a low percentage even if the 3-strike policy did do what was intended the real crime rates are from first time offenders. This policy has little to no effect on them because even if they get one strike they are not getting the final harsh punishment as an offender with three strikes would.

States that use 3-strike policies were only thinking of the rehabilitation offenders would be receiving while incarcerated and not having that rehabilitation go with them once the offender is not incarcerated. This limited thinking created a temporary fix, but not permanent to criminal issues. The fix would be when the offender was actually incarcerated, because offenders cannot commit more crimes and harm to the public, there was no thought into what would happen when he/she was out of prison (Clear, Rose, & Ryder, 2001). States are temporarily incarcerating these criminals and sending them straight home to the criminal environment they were in the first place. They go home or to a similar neighborhood that led them to criminal activity in the first place and this puts them into the ongoing criminal lifestyle cycle (Clear, Rose, & Ryder, 2001). This issue of going right back into a criminal environment leaves little to no room for them to improve and staying out of trouble. They are not prepared or taught how to change the way they should act when going back home.

It was also not taken into consideration what happens when that offender leaves their family. The offender could have been the person that created the main source of income,

supported family, or help the neighborhood (Clear, Rose, & Ryder, 2001). With the offender leaving, it can cause a financial strain on the family, neighborhood, the local community, and local businesses. The family might not be able to pay bills once the offender is incarcerated which leaves them to not be able to pay for their home, bills, groceries, etc. The family could be forced to leave or not be able to pay for anything; the neighborhood could lose residents and therefore lose money. As a result of lack of finances the family could even fall into criminal activities to help get by. This can also result in damages to local businesses due to lack of customers, population, and overall finances (Clear, Rose, & Ryder, 2001).

Another issue for these offenders is the negative stigma one gets after being incarcerated. The negative stigma makes it hard for them to get decent jobs, live in a decent neighborhood, and being judged differently by society. Once being incarcerated it is very hard for other people to see past that and offenders are permanently labeled (Clear, Rose, & Ryder, 2001). This makes the offender socially tainted in a way and when the rest of society will not accept them the criminal environment and people will. This results in the cycle of more criminal activity being done and being incarcerated multiple times (Clear, Rose, & Ryder, 2001). This shows that the policy is not the permanent fix the states were hoping to accomplish, but instead a very temporary fix.

### Crime Rate

The justice system has been trying to reduce crime rates for years, for repeat and new offenders. The most popular attempt to fix criminal activity has been a get-tough attitude towards offenders (Andrews & Bonta, 2010). People think that the only way to fix the crime rates is to be harder on the offenders and not to think of any other possible solutions, which is the result of pushing for harsher punishments. The 3-strike policy definitely falls under this category of being

harder on the offender. Being tough on offenders with sentencing should reduce crime rates because thinking logically an offender does not want to be incarcerated for an extended period of time. It has been found that the policy has the opposite effects as intended with crime rates. Crime rates in the states that have the policy increased or the rates didn't move after the policy was implemented (Kovandzic, Sloan, & Vieraitis, 2002). Very little evidence was found of the 3-strike policy actually decreasing criminal activity (Schultz, 2000). The 3-strike policy was supposed to drastically and effectively decrease the criminal rates. The overall increasing, or standstill, shows that the policy is not safe for the general public and causes more damage than good with offenders.

The policy is also showing the behavior of offenders and what does not work. The thought that offenders will act out if the punishment is unfair is not a new idea. Cesare Beccaria, a famous criminologist, proposed this idea in 1764. His thoughts were that offenders should be punished effectively for the crime. Having someone, the court, picking a punishment at random or having a range of sentencing time is not appropriate due to the punishment always varying case by case with offenders (Williams & McShane, 1998). With the offender never knowing how they will be sentenced it causes the offenders to act worse than better when it comes to criminal activity.

For the most part the crime rates stayed steady after the policy was implemented (Kovandzic, Sloan, & Vieraitis, 2002). There has not been enough data to show some crime rates to have a definite increase or decrease. Some crime rates increase and decrease so picking a pattern can be difficult (Chen, 2008). The crimes that the rates were not affected were both strikeable offenses and non-strikeable offenses. This shows that the crimes that states were hoping to decrease, strikeable offenses, from the policy did not work and did not help at all.

Some of the crimes that did not move in rate were: petty theft, rape, robbery, assault, and burglary (Kovandzic, Sloan, & Vieraitis, 2002). California has had increasing larceny crimes since the 3-strike policy began (Shepherd, 2002).

Some do argue that the policy does what it was intended to do and has decreased crime rates. Chen (2008) states that robbery and larceny actually declined. An argument that some states have made is that the policy did in fact decrease the crime rates because the states have statistics of decreasing crime. The issue is that these decreasing rates started before the policy was implemented, therefore they would have kept decreasing with or without the policy. As this information does look good for the states, unfortunately the data cannot be linked and associated with the policy. The information is invalid due to the decrease in crime starting before implementation of these policies (Kovandzic, Sloan, & Vieraitis, 2002).

The most concerning criminal rate change after the policy started was the increase in homicide rates (Kovandzic, Sloan, & Vieraitis, 2002). The states wanted to decrease crime but the policy increased one of the most dangerous crimes an offender can do. After the policy started, homicide rates went up from 10% to 12% short term and 23% to 29% long term (Kovandzic, Sloan, & Vieraitis, 2002). The policy is showing that it is dangerous for the general public and that offenders are acting negatively towards it. The increasing homicide rates could be because the offenders are trying to not get caught and get a strike. The offenders feel the need to commit more crimes to protect themselves or because they know the sentencing will be long no matter what, so they commit whatever crimes they want. The correlation of increasing homicide alone should be a red flag that this policy is ineffective and needs to be fixed.

California is showing the consequences

California has been the leading example for research on their 3-strike policy. The data and studies collected throughout the years, since the policy was implemented in the 1990s, are showing consequences this policy is bringing to the state. The initial push for the creation of this policy for California was in the 1990s by a man named Mike Reynolds (Schultz, 1999). He was a father whose daughter was murdered by a repeating offender (Schultz, 1999). California was not the first state to implement the policy and the emotional father was trying to fix a problem so he brought the issue to the California government. This initial push of the 3-strike policy was not originally a government issue; therefore, there was little research and preparation done to see if this policy would be efficient (Zimring, 1996). No experts were consulted by the government of California to learn about 3-strikes or if implementing the policy would be effective for the state (Zimring, 1996). The 3-strike policy was started blindly, intended to be a quick fix for a problem driven by emotions. It sounded good to say the state of California was starting the policy for all the right reasons, but the government did not know enough about the actual 3-strikes policy. The lack of research, data collection, and implementation a policy in the state of California shows the overall negatives of the 3-strike policy.

When it comes to most states with the policy they have an overall limit or group of crimes that can be considered a strike, or a strike zone. California on the other hand changes its rules as more strikes are accrued; it is the only state to do so. California is considered to be the most relaxed state with rules when it comes to the 3-strike policy. The first two strikes must be serious felonies, like most other states, but the 3<sup>rd</sup> strike can be any felony the offender is convicted of (Zimring, 1996). This is causing an issue because offenders are getting the final and more severe punishment for simpler crimes. An offender can have two strikes and end up going to prison 25 years to life over something such as theft or a non-violent/dangerous crime



(Zimring, 1996). These final felony charges that the offenders are being sentenced 25 years to life does not match the crime committed. It has also been found that there is a higher number of offenders going from strike two to strike three rather than strike one to strike two (Helland & Tabarrok, 2007). This shows that it is much easier to get the third strike in this state compared to the first two strikes. In California, the last strike's punishment can be severely over sentencing compared to what the offender would get if the state did not have the 3-strikes policy (Caulkins, 2001). The rules in California's 3-strike policy has caused major issues such as: prison growth, consuming state budget, and unjust sentencing (Chen, 2008).

Population growth has become a pertinent issue in California because of this policy. The rapid increasing of population plus the extended sentencing is filling up prisons quickly without enough offenders leaving the prison to create room. The more offenders going in than going out is causing major overcrowding issues therefore causing financial problems for the state (Kovandzic, Sloan, & Vieraitis, 2002). Many other states are facing the same issue as California when it comes to the financial burden of providing for incarcerated offenders. Many have had budget cuts and cannot afford the overcrowding. Due to overcrowding in the states they now need: new facilities, new employers, etc., but cannot be provided or afforded (Andrews & Bonta, 2010). In 1998 alone, California sentenced 40,511 offenders on the third strike. Only 120 offenders were convicted of the 3<sup>rd</sup> strike in Washington the same year due to their strict rules on the policy (Chen, 2008). This means that California is paying for 40,511 offenders every year for 25 years to life just in 1998 alone, not counting other years. As offenders are in prison longer they are contributing to the growing aged felon group (Vitiello, 2004). The 3<sup>rd</sup> strike received by the offender is almost guaranteeing that they will end up in the aged felon group.

As the offenders are aging and still incarcerated they are causing the state increasing issues. The state of California cannot afford to keep providing the high cost that it requires to take care of these aging offenders. As the offender gets older they are accruing the yearly cost it requires to have an offender incarcerated and any additional costs that come with aging. These offenders are no longer a serious social risk to the general population and most could be released without any issues, but they remain incarcerated and the state is still paying for all of their expenses (Vitiello, 2004). If some of these aged offenders were to be released, they would save the state money and free up more space in prison for violent and dangerous offenders that actually need to be incarcerated (Vitiello, 2004). Releasing these non-dangerous offenders can reserve prisons for dangerous offenders.

Aging out theory shows that these aging offenders could be released into society and be a very minimal risk, if any risk at all. As offenders get older, and people in general, they are less likely to commit crimes or reoffend and be apart of the recidivism issue. There are peak ages for criminal activity in offenders and criminal activity decreases with age. Being less likely to commit crimes is what the 3-strikes policy intends and releasing the aging offenders should not be an issue or risk (Cornelius, Gore, & Lynch, 2017). By states keeping these aged felons, all they are doing is spending money on people that do not need to be incarcerated. From a financial point of view, it is very irresponsible to keep these offenders incarcerated.

When California started this policy in the 1990s, the budget was able to cover all the cost of the 3-strike policy being implemented. As time has gone by the current budget and current cost of the 3-strike policy does not match. Overtime the budget will decrease and the cost of offenders will increase. California's budget can no longer keep up with the high volume of three strike offenders they are incarcerating delete. The average cost to have an incarcerated offender

is about \$26,000 a year in the state of California (Vitiello, 2004). The cost of an aging offender ranges between \$40,000-\$70,000 a year, due to health issues, special needs, etc. (Vitiello, 2004). With California paying for each offender, every year, plus new offenders that are constantly being incarcerated the number of offender, cost are drastically increasing. This leads California to pay millions of dollars just to keep these offenders incarcerated.

California, and other states, are all facing the issue of unjust and unfair sentencing for offenders. The longer sentencing is making the offenders act out and resulting in more crimes instead of an incentive do to the opposite. Punishment should be consistent because with the punishment getting worse, or being unpredictable, it does not leave the offender to behave better (Andrews & Bonta, 2010). There is no reward for good behavior, but there is punishment for bad behavior. The State of California needs to look into the mind of the offender to see what will help them not commit crimes instead of putting them in prison and hoping for them to magically get fixed. If the state looked from a point of view like Cesare Beccaria they might be able to find a more effective way to deal with the offenders and sentencing (Williams & McShane, 1998).

### **Theory & Thesis Statement**

Three-strikes policies should be eliminated in order to start repairing the issues these policies have induced. Instead of the 3-strike policy being used there needs to be a considerable redirection towards rehabilitation considerable emphasis on rehabilitation, inside and outside of prison. If 3-strikes policies were eliminated, the issues it has caused could be reversed. Such reversed behavior includes: decreasing crime rates instead of increasing, states will have less financial burdens because of less people being incarcerated, and offenders can also get appropriate sentencing that is correct for the crime committed. The money, time, and resources can all be used more efficiently due to not being wasted on the demand the 3-strikes policies

entail. As part of using the resources appropriately, after 3-strike policy elimination, rehabilitation programs can get much more attention and research can be done to aid offenders on them to help offenders.

Data has shown that the 3-strike policy is not doing what was intended and is now causing damage for states using it. The high cost of the policy alone is damaging the states finances and budget. To have an offender incarcerated costs thousands of dollars each year as a minimum (Vitiello, 2004). Add the amount of years the offenders are being sentenced, the last strike being between 25 years to life, states can be paying millions of dollars just to keep the offenders incarcerated due to this policy. It has also been proven that since the 3-strikes policies has been applied crime rates have not been fixed or reduced for the most part (Kovandzic, Sloan, & Vieraitis, 2002). All of this effort is being put into the 3-strikes policies and the quantity of positive results do not come close to the negative consequences. The 3-strikes policies is also harming the offenders' family and community they reside in when not being incarcerated. The extended sentencing on the final strike, which does or does not equal the actual sentencing they would get non-policy, is leaving the offenders family and members in distress. The offender is now incarcerated and the family is left under unnecessary stress to take care of themselves.

Recidivism should be the first issue tackled to help offenders because that is what the 3-strike policy was trying to fix, but couldn't. Instead of using the 3-strikes policies that has been proved ineffective rehabilitation for offenders will be the best way to help fix recidivism. If the offender can learn to change his/her behavior or find the root of behavioral problems they can get out of prison and not repeat criminal activity. Rehabilitation programs are being used in some prisons presently but budgeting issues can eliminate or minimize the programs availability and

strength. An example of a program being used is called Risk-Need-Responsibility or RNR (Andrews & Bonta, 2010). RNR has reduced recidivism by up 35% when being activated. RNR is not the only, or most effective, rehabilitation program for reducing recidivism but it shows that rehabilitation can work and move in a positive direction. Proper rehabilitation programs can make it so there will be no need for policies such as the 3-strikes policies. If a program like RNR is used and works the states can use the program as a phase out process for the 3-strikes policies. They can stop using the policy to incarcerate people and use the program to help them. After time recidivism would reduce and prove that a policy such as the 3-strikes policies is not necessary.

A program/project should be created and executed by all policy holding states to phase out 3-strikes policies. A program to help offenders can be effective and help the prison keep track of the offenders progress. It can help reduce recidivism, improve offenders lives inside and outside of incarceration, and could be helpful with collecting data for what is effective and what is not. The program can help offenders learn from their past mistakes and what they need to do for reintegration into society so they do not make future criminal mistakes. The more the prisons and states invest into taking time to learn and help the offenders with rehabilitation they can learn what helps and what is effective for future actions.

### **Proposed Project**

The ultimate goal is for the elimination of the 3-strikes policies and to implement the correct project as a replacement to maximize successfulness. The project should be separated into two sections for the policy holding states: 1) Project to replace and undo the damage the 3-strikes policies has created, and 2) An effective timeline for eliminating the policy. Combining the two steps should result in a positive outcome for the elimination of the 3-strikes policies and

the adjustments that will come after. The goal is to help and optimize results in the policy holding states, offenders, and communities connected to both.

The project what will be replacing or phasing out the 3-strikes policies is separated into two categories to be of optimal help for the states and offender involved. The first step is to have stronger rehabilitation programs during an offenders first time incarcerated to help prevent recidivism (Andrews & Bonta, 2010). The best way to utilize rehabilitation programs is for them to focus on why the offenders have behaved the way that they do and how they can help correct themselves so recidivism does not occur (Clear, Rose, & Ryder, 2001). The main focus that the 3-strikes policies was trying to fix, but couldn't, was recidivism. An offender will get out of being incarcerated and go right back into the environment that helped them get incarcerated in the first place. Correct rehabilitation should help these offenders know how to address the environment they are going back into and help them from not being a repeated offender (Andrews & Bonta, 2010). Second, as a project replacement of 3-strikes policies elimination is that the offenders being incarcerated for the final strike should be re-evaluated for sentencing. There is no reason to have offenders being incarcerated due to a policy that is no longer existing, therefore, the re-evaluation would include the final strike offenders cases being looked over to see if the sentencing is actually just or appropriate (Caulkins, 2001). If it is found that the sentencing does not add up to the final strike sentencing then the offender can be released or be given a shorter sentencing term.

The best way to help with the replacement program after the 3-strikes policies is eliminated is for the states to assign personnel to be incharge of the program. The states can hire new employees for such tasks or use an already existing employee to do so. These employees would be incharge of finding and using the correct rehabilitation programs, re-evaluating final

strike offenders, and collecting all of the data during the entire process. The employees will help with the evolvement of offenders process and contribute to the timeline that has been given.

Having a specific timeline is crucial for the elimination of the 3-strikes policies to ensure the states are moving and progressing in a timely manner. An appropriate timeline given could be a 36 month period, so the prisons and states have time to adjust to the changes happening. The timeline would be separated into three categories: rehabilitation, data collecting, and releasing of offenders. The set timeframe can ensure that all the work will be done in a timely fashion by everyone. Within the first 12 months the correct rehabilitation program should be decided on and implemented for first time offenders and for offenders on their final strike. Month 12-24 should be used to analyze the results of how rehabilitation has affected these offenders selected for the rehabilitation program. The final months, 24-36, should be the time to review and release the offenders on their final strike that effectively did the rehabilitation program and their crime does not add up to the policies sentencing. Following all the steps correctly of the proposed project will ensure a positive outcome for the phasing out of the 3-strikes policies.

### **Discussion**

The 3-strikes policies has been proven to be a dysfunctional policy after implementation (Clear, Rose, & Ryder, 2001; Schultz, 1999; Zimring, 1996). It was intended to eliminate recidivism, save the state's money, and make the communities safer (Chen, 2008). As an end result the 3-strikes policies has not fulfilled those goals. The project proposed could help reverse the damage the 3-strikes policies has created over time. By eliminating the 3-strikes policies and implementing the replacement programs it could potentially help improve: recidivism, policy carrying state's finances, overcrowding/room in the prisons, and improve the overall communities in a positive manner.

Rehabilitation can help with all four categories stated above if the 3-strikes policies were to be eliminated. Each state has to invest a significant amount of money into the 3-strikes policies and the finances only increase over time (Kovandzic, Sloan, & Vieraitis, 2002). Effective rehabilitation programs and elimination of the policy can result in these state's saving all the money spend on the 3-strikes policies and to put it towards something else in the states budget. Rehabilitating offenders the first time they are incarcerated can help reduce recidivism. Reducing recidivism means the state will be spending less money on offenders because less will be re-committing crimes, therefore less incarcerations (Andrews & Bonta, 2010). Data from rehabilitation programs such as Risk-Need-Responsibility was shown to reduce recidivism by 35% on offenders (Andrews & Bonta, 2010). This is an example of one rehabilitation program and it shows that an effective program can have offenders stepping towards progression. With less offenders re-committing crimes and being incarcerated it can help with overcrowding issues in prison also. If fewer offenders are being incarcerated it helps with having more offender going out than coming in which will reduce overcrowding (Andrews & Bonta, 2010). Communities can also be safer once the offender is out of prison due to their changed state of mind. The offender can change themselves and contribute to changing the community to have a safer environment both within the family and outside of it. Offenders staying out of prison, due to rehabilitation, can also help change the community and reduce the hardship on their families (Clear, Rose, & Ryder, 2001). The offenders can go back to their families and be productive members so the struggling can be reduced.

Re-evaluating final strike offenders could be the most beneficial movement in the replacement program of the project. When an offender is sentenced to their final strike they are spending a minimum of 25 to life in prison (Helland & Tabarrok, 2007). Meaning states that



carry the 3-strikes policies has to pay for the offenders: facilities, food, medical, etc. for the entire long-term sentencing. It has also been proven that as the offender ages the cost for them does not only have the states paying long term but also due to the extended sentencing the cost will increase. The aging out theory could be applied in this re-evaluation part of the program and being able to release some of these offenders would be very beneficial (Cornelius, Gore, & Lynch, 2017). If some of these final offenders were to be released, based on severity of crime committed and sentencing given, the states could have on a significant amount of money freed. Releasing some of the final strike offenders would result in opening up space in the prisons and contribute to the reduction of overcrowding. Long-term sentencing is a major issue with overcrowding because this means that as more people are coming into prison and staying longer less people are leaving in a timely fashion (Kovandzic, Sloan, & Vieraitis, 2002). By making more room in the prisons it allows more space for dangerous offenders to be incarcerated appropriately, using the space wisely, and the ability to use the facilities more efficiently. Some final strike offenders can be released and go back to their families and this could result in them being able to contribute again. Most of the final strike offenders would be older and this helps ensure that they will be safe to go back into society as explained in the aging out theory (Cornelius, Gore, & Lynch, 2017). Their contributions can help reduce hardship on the families and help the community work together better.

The suggestion to implement a timeline for the project can help states with future adequate planning. In the total of 36 months, each state can start collecting data on how the replacement program is helping, progressing, or declining in efforts. States can analyze how many offenders will be released, number of offenders coming back, how effective the rehabilitation programs are working, how much money the final strike offenders are costing

them, and overcrowding numbers. All the data can help the states make future plans for after the 36 months is up. The timeline gives them a limited timeframe but it can be an assurance that once the timeline is up the states can begin new different plans. They can plan a new budget within or after the 36 months it takes to eliminate and replace the policy. Knowing the numbers in the data can help them narrow down finances so the budget is being used to its full potential. The timeline can also be a positive action for the offenders incarcerated. Offenders on their final strike can be notified if they will be released or not and can plan for the future knowing when they will be released. Families can make plans and it can be made easy for the offender to go from being incarcerated to being back home.

### **Limitations**

All research has some sort of limitations, bias, or unbiased information provided. The limitation is the possibility for error in the suggestion of 3-strikes policies elimination. There is no guarantee that eliminating the policy will reverse all of the negative side effect. Outcomes can be hypothesized and calculated but there can be human error and error in the prediction of offenders behaviors. Just as in the beginning of implementing the 3-strikes policies the states misjudged the offenders behaviors towards the 3-strike policy. Eliminating the 3-strikes policies does not guarantee anything either (Kovandzic, Sloan, & Vieraitis, 2002; Stolzenberg & D'alessio, 1997).

Most of the information given could be considered bias because the majority of them all supports the goal of the research, that the 3-strikes policies should be eliminated. Information is given to show the unjust sentencing and the negative effects of the 3-strike policy (Chen, 2008; Zimring, 1996). These sources are a positive enforcement of the research with little giving the 3-strikes policies a negative light so this could be considered a limitation. Another limitation can

be the time the sources were released, not all of the information is current and can be years old (Austin, Clark, & Henry, 1997). With the sources not being up to date it can be argued that the 3-strikes policies information has changed and could show different results for the policy.

The unbiased information can be the the source that provides straight information about the 3-strike states (Austin, Clark, & Henry, 1997). As this information does not try to persuade one way or another it can be interpreted as one wishes. If one is trying to prove the 3-strikes policies is wrong they will try to find negatives in the data given. If one wants to find the positives in the 3-strikes policies they will only look for the data that can support it.

### **Recommended Future Research**

Based on both my research and project provided there are multiple areas future researchers should consider if researching this topic. The advised areas are what can be further explored to enhance knowledge and data collecting on this topic. Future researchers should think of the following: “Can past proposed projects be realistically plausible?” and comparing states that do not have the 3-strikes policies vs. state that do use the 3-strikes policies.

There can be many past projects or suggestions for how to fix or eliminate the 3-strikes policies. What future researchers can do is analyze the suggested information with new data to see if the projects would be effective. As everything is changing in time there might be a new light on information of behavior that one can add to past projects. Future researchers can use the information to build on, take away, or compile data to create their own project.

An important area to look at is the comparison on 3-strikes policies states vs. non-strike policy states. All of the states have a reason for using the 3-strikes policies or not. Non-strike policy states might have different methods on how to treat offenders and recidivism and that could be very helpful for the 3-strikes policies holding states. Is there a common ground all the

states have, but some go with the 3-strikes policies and some do not? Looking at each states different justice systems and comparing could show drastic differences that can be used, or not, to different states advantages. Another thing to compare the states with is the specific crime in their locations. Do some state simply have more crime issues than others due to location, Population, or Culture?

### **Conclusion**

Policies implemented by states are supposed to be created with the purpose of helping the people in general and the community overall. The 3-strikes policies was initially created for such a reason, but the end result did not happen as wished for. At the beginning this policy was put into place with the best intentions but with lack of research and proper planning the 3-strike policy has taken a negative turn. The elimination of the 3-strikes policies can help undo the damages that has been caused since the implementation years ago. The 3-strikes policies has not only causing negative side effects for the states in multiple ways but also: the people being incarcerated, recidivism, finances, public safety, and offenders fair sentencing treatment. Three-strikes policies was supposed to be a cure all for these issues but instead did the reverse effect.

Offenders are being treated unfairly with unjust sentencing on the final strike. The 25 years to life sentencing results in little to no hope for the offender to ever be out of prison and be able to improve their lives. The unjust sentencing is causing an incarcerated non-stop cycle for these offenders and there is little chance they can fix themselves. This non-stop cycle is causing the 3-strikes policies states to be dealing with a huge financial burden having all the offenders incarcerated and the outside communities are struggling. Families are going through hardship with a member missing, which results in the community around them struggling also.

Effective programs can help do what was intended of the 3-strikes policies in the first place. There is no need for the state, offenders, and the community to struggle due to a faulty policy. The correct program can be implemented and can do what the 3-strikes policies was initially supposed to, but with a better outcome. Having the correct program will help the states with: recidivism, finances, community hardship, etc. The correct replacement programs will not only be beneficial for states that implement 3-strikes policies but it can ensure that offenders are getting the proper treatment they deserve.

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